

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Timothy Williams,
Movant,

DEBRA P. HACKBARTH
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

v.

Case No. 2:cv742-MEF-SRW
(CR-05-216MEF)

UNITED STATES OF AMERICA,
RESPONDANT,

Motion to reconsider Dismissal of Count 2 of the Indictment

Pursuant to the order of this Court Middle District of Alabama, Northern Division to Grant the defendant's motion to dismiss count 2 of the indictment (Doc #34) as an motion to supplement his 28 U.S.C. 2255 motion is construed by the defendant as an abuse of decreation, a miscarriage of Justice. The motion was to dismiss, not to supplement his 2255.

It is a violation of due process to convict and punish a person without evidence of his guilt. This failure to dismiss count 2 (924(c)) of the indictment, after this court has been furnished with undisputable evidence from the record (police report) that the firearms in question were never "actively employed" in the commission of a trafficking offense, is a abuse of decreation. The Supreme Court has made it clear in what constitutes a 924 (c)(1)(a) in "Bailey v. United States," 116 S. ct 501 the Supreme Court held that conviction of a defendant for "use" and "carry" of a firearm under 924 (c) requires "evidence sufficient to show active employment of the firearms by the defendant."

The court explained that "use" under section 924(c)(1) includes brandishing, displaying, bartering, striking with, and most obviously firing or attempting to fire a firearm.

The court rejected the government's contention that " placement of a firearm to provide a sense of security or to embolden" a defendant constitute "use" under the statute. Thus, the court held the defendant cannot be charged under 924 (c)(1) merely for storing a weapon near drugs or drug proceeds. "Moreover, " use does not encompass a defendant's hiding a gun where it is available for use if necessary.

Movant contends that the facts are well established in the police report that there were no active employment of the firearms, and the United States has violated the defendants due process right under the Fifth Amendment of the Constitution by indicting him on charges that he did not commit.

It is unlawful and unconstitutional for the defendant to still be in a Federal Prison for crimes he did not commit, after he has provided the necessary evidence to this Honorable Court proving beyond any doubt that there were no active employment of the firearms, and confirming that he is "Actually Innocent".

According to the highest court in the United States of America the Supreme Court- this court is compelled to uphold all Supreme Court decisions, therefore reversing it's prior order of merely supplementing his motion to dismiss count 2 of the indictment to his 2255, but to uphold the Supreme Court decision in Bailey v. United States and dismiss count 2 of the indictment.

The decision in "Bailey" by the Supreme Court substantially altered prior law concerning the evidence necessary to show "use" under section 924(c)(1) . The Attorney General office of the United States has put

forth the 1433 DEPARTMENT MEMORANDUM-KEENEY MEMORANDUM RE BAILEY Decision, December 13, 1995 ordering all United States Attorneys and all United States District Courts that the decision in "Bailey" is law, and all U.S. Attorneys and Federal Judges and their court shall not detain or prosecute anyone without the necessary evidence of "active employment".

Therefore, the only lawful thing this Honorable Court can do is to release the defendant from his unlawful conviction on count 2 of the indictment, not to merely supplement his motion to his 28 U.S.C. 2255.

Movant (Timothy Williams) moves this Honorable Court, Middle District of Alabama, for an order from Chief United States District Judge Mark E. Fuller to dismiss count 2 of the indictment, (18 U.S.C. 924 (c)(1)(a) pursuant to the decision by the United States Supreme Court in Bailey v. United States 516 U.S. 137,144,137/L.Ed 2d 472,116 S. ct 501, ruling to sustain a conviction there must be evidence sufficient to show "active employment" of the firearm by the defendant.

It is the defendant contentions that no such evidence can sustain this conviction under 924(c)(1)(a) , the defendant has provided the necessary evidence that there were no "active employment" by the defendant.

The defendant request that District Judge Fuller take notice of the Narcotics & Intelligence Bureau Evidence/Property Inventory Report, where it provides the location the firearms were found and that there could not have been any "use" or "carrying" and no active employment of the firearm.

Movant prays that after reviewing tis evidence from the record, United States District Judge Fuller upholds the Supreme Court's ruling and order the immediate and ~~un~~constitutional release of the defendant (Timothy Williams) from custody, expunction of "criminal" record and any further relief which is deemed lawful and due.

Done this 19 Day of March, 2008

Respectfully Submitted,


Timothy Williams, pro se



NARCOTICS & INTELLIGENCE BUREAU EVIDENCE/PROPERTY INVENTORY



The following item(s) were seized/received by the Montgomery Police Department subsequent to a: (circle one)
SEARCH WARRANT ~~CONSENT SEARCH~~, or ~~ADMINISTRATIVE INVENTORY~~. These items were inventoried
 by PA Sparkman #071, a member of the Narcotics and Intelligence Bureau.

ADDRESS OBTAINED: 3349 Buckboard Rd

DATE: June 13, 2005

TIME OF ENTRY: 11:15

TIME OF EXIT: 1320

PAGE 1 of 3

ITEM#	DESCRIPTION OF ITEM SEIZED OR RECEIVED	LOCATION ITEM FOUND	TIME	OFFICER
1	1 Sturm Ruger Sn# 195-57103	master bedroom	1115	JTC 258
	223 cal Loaded - 1 round in	closet - propped		
	chamber - 2 magazines	against wall		
	53 total rounds			
2	Rossi .38 Special Serial# W2116081	between console	1115	RJC 3010
	1 Black Nylon Hdster 5 rounds	+ drivers seat in		
		White Jeep 3A9919Y		
3	3 Lids, 2 tubs - plastic, blue	garage	1115	WBH 436
4	1 ⁹²⁵ Ching Norince - Sn# 01125	master bedroom closet	1115	JTC 258
	1 magazine, no rounds	propped against wall		
5	1 Safe (key) A - #12,002 - 12 bundles	under bed	1115	JTC 258
	1 Nokia Cellphone ^{ESN#} Sn# 267D4971	All # counted by JTC 258		
	1 Safe (key) B - #14,1002 -			
10	\$3,465.00 Assorted US Currency	closet area behind door	1115	WBH 436
	Paper documents - next to \$			
7	Ruger P-89 Sn# 311-981162 Loaded	between mattress + box	1115	JTC
	1 Chamber - 2 magazines - total rounds 21	spring - MB		

By signing below I certify that I have received a copy of the inventory or item(s) as identified above.

SIGNATURE OF RECEIVER: To Custody

DATE & TIME: June 13, 2005 @ 1320

I certify that the above inventory accurately reflects the items received or removed from the listed location.

SIGNATURE OF EVIDENCE OFFICER: PA Sparkman #071

DATE & TIME: June 13, 2005 @ 1320

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-CERTIFICATE OF SERVICE-

I, hereby certify that a true and correct copy of the above Motion and documents have been provided to the following parties via first class mail postage prepaid on MARCH 19, 2008

Clerk of the Court
Middle District of Alabama
1 Church Street, Suite B-100
Montgomery, Alabama 36104

Susan Redmond
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, Alabama 36104

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Timothy Williams", is written over a horizontal line.

Timothy Williams Movant
F.C.I. Oakdale # 11778-002
P.O. Box 5000
Oakdale, LA. 71463-5000

Timothy Williams-11778-002
F.C.D OAKdale
P.O. Box 5000
OAKdale LA, 71463

ALEXANDRIA LA 713
20 MAR 2008 PM 1 T



CLERK OF the court
Middle District of Alabama
1 Church Street, Suite B-100
Montgomery, Alabama
36104

36104+401A

